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Uniform Civil Code: A Proposal to One Nation One Law

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ABSTRACT

In India, the implementation of the Uniform Civil Code (UCC) is seen as the key to secularizing and unifying the country in personal matters as well. The UCC holds great significance in India's socio-political landscape. This discussion delves into the intricacies of the UCC, examining its historical context, opposing arguments, controversies, and potential implications. While the UCC offers the prospect of a common set of laws for all citizens, which could advance gender equality and national unity, it also sparks debates about religious liberties, cultural diversity, and the rights of minority communities. The Major questions to be considered under this research with respect to the applicability and formulation of one nation on law can be; how would we address the argument that implementing a UCC might infringe upon the fundamental right to freedom of religion guaranteed under Article 25 of the Indian Constitution?; Have we considered the potential challenges posed by the diverse customs and beliefs that a UCC would seek to transform, and the resistance it might face as a result?; and what about those who argue that the implementation of a UCC could lead to arbitrary interpretations and applications of the law, potentially impacting different communities in unintended ways?. The broader concept of 'One Nation One Law' aims for uniformity in laws across the nation, ensuring that all citizens are governed by the same legal principles and statutes. It involves standardizing various laws that differ from state to state or community to community, not just limited to civil codes but extending to criminal laws, commercial laws, and other legal areas. Thus this paper shall aim to recognize the practical and social outlook towards the implementation and legality of UCC in contrast with the plural legislations in India.

Keywords: Uniform Civil Code, Religion, Plurality, Law, Unification

I. INTRODUCTION

The implementation of a Uniform Civil Code (UCC) and the broader vision of One Nation, One Law, represent significant steps towards legal uniformity and equality in India. However, these reforms require careful consideration of India's diverse cultural landscape and sensitive handling to ensure broad acceptance and implementation. The ongoing debate reflects the

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dynamic nature of Indian democracy, balancing modernization with tradition. The "One Nation, One Law" principle varies in its application internationally. Countries with federal systems or significant regional diversity often face challenges in achieving complete legal uniformity. In contrast, nations with centralized legal systems or a strong tradition of codified laws tend to align more closely with this principle. The international perspective highlights the balance between maintaining national unity and respecting regional, cultural, and historical diversity in legal frameworks.³

Goa is an exception in India where a common civil code is applicable to all its citizens, regardless of religion. This often serves as an example for proponents of UCC. Enforcing the principle of "One Nation, One Law" in India, especially through the implementation of a UCC, is a complex and multifaceted process. The objectives of "One Nation, One Law" are:

1. **Uniformity:** Ensuring the same set of civil laws apply to all citizens, irrespective of religion.
2. **Equality:** Promoting gender equality and preventing discrimination based on religion.
3. **National Integration:** Strengthening national unity by harmonizing diverse legal systems.

This research shall contribute towards an in-depth understanding at what it would entail, including the challenges, potential benefits, and steps towards its enforcement.

II. INTERNATIONAL ENGAGEMENT TOWARDS 'ONE NATION ONE LAW'

The concept of "One Nation, One Law" resonates with varying degrees of implementation and acceptance in different countries around the world. Here is an overview of how this concept is perceived and implemented internationally:⁴

- a) **United States:**⁵ The U.S. follows a federal system where both federal and state laws coexist. While there is no single civil code applicable nationwide, certain laws like federal criminal law, civil rights laws, and regulations (e.g., tax laws, immigration laws) apply uniformly across all states. States have their own legal systems for family law, property law, and other civil matters. However, the U.S. Constitution and

³ Abdul Matin, "Decoding Uniform Civil Code (UCC): A Sociological Analysis." In *Rethinking Muslim Personal Law* 63-72 (Routledge India, 2022).

⁴ Ricarda Hammer, "Decolonizing the civil sphere: The politics of difference, imperial erasures, and theorizing from history", 38(2) *Sociological Theory* 101-121 (2020).

⁵ Elizabeth A. Reese, "The other American law", 555 *Stan. L. Rev.* 73 (2021).

Supreme Court decisions ensure a basic uniformity in fundamental rights and liberties.

- b) **European Union:** The EU seeks to harmonize laws across member states in areas like trade, competition, and consumer protection, ensuring uniformity to facilitate the single market. Despite harmonization efforts, member states retain significant autonomy over personal laws, criminal laws, and family laws. The European Court of Justice plays a key role in ensuring consistency in the application of EU law.
- c) **France:** France follows a civil law system with a comprehensive set of codes that apply uniformly across the nation. The Napoleonic Code (Code Civil) is a prime example of a single legal framework governing civil matters like marriage, divorce, and inheritance. French law emphasizes secularism (*laïcité*), ensuring that religious practices do not interfere with state laws. This aligns with the "One Nation, One Law" principle.
- d) **United Kingdom:** The UK, while having a common law system, does not have a single codified civil code. English law is applied in England and Wales, while Scotland and Northern Ireland have their own legal systems. The UK's approach is more decentralized compared to the "One Nation, One Law" concept, allowing for legal diversity within the country.
- e) **Australia:** Similar to the U.S., Australia has a federal system where both federal and state/territory laws coexist. Federal laws provide uniformity in certain areas, but states and territories have significant legislative power, particularly in civil matters. Efforts are made to harmonize laws across states, particularly in commercial and corporate law through the Council of Australian Governments (COAG).
- f) **Middle Eastern Countries:**⁶ In several Middle Eastern countries, laws are based on Sharia (Islamic law), which applies uniformly to all citizens within the country. These countries often have a single set of laws for personal and civil matters, reflecting the "One Nation, One Law" principle in a religious context.
- g) **Canada:** Canada has a unique legal system where Quebec follows a civil law system, while other provinces follow common law. Federal laws apply uniformly across the nation, but significant diversity exists in civil matters due to Quebec's distinct legal tradition.

⁶ Paul R Brass, "Elite groups, symbol manipulation and ethnic identity among the Muslims of South Asia", In *Political Identity in South Asia* 35-77 (Routledge, 2024).

- h) South Africa:** South Africa combines elements of Roman-Dutch law and common law. Post-apartheid, there have been efforts to ensure laws reflect equality and uniformity, particularly in human rights and civil liberties.

III. POLITICAL OUTLOOK TOWARDS ACCEPTANCE AND IMPLEMENTATION

The political outlook in India on the concept of "One Nation, One Law," particularly with regard to the implementation of a Uniform Civil Code (UCC), is highly polarized and complex. While Some BJP-ruled states, have expressed intentions to draft their versions of a UCC, indicating a move towards a piecemeal implementation, Uttarakhand become the first state to enact and enforce this law.⁷

Political benefits of a common set of civil laws would reinforce the idea of national unity and integration. UCC would eliminate gender-based disparities present in various personal laws. Uniform laws would simplify legal procedures and reduce the burden on the judiciary.

Here's an overview of the various political perspectives, including the positions of major political parties, potential political implications, and the broader political landscape:⁸

A. Bharatiya Janata Party (BJP)

- 1. Support for UCC:** The BJP has been a strong advocate for the implementation of a UCC, viewing it as a means to promote national integration and ensure equality before the law.
- 2. Manifesto Promises:** The party has repeatedly included the UCC in its election manifestos, emphasizing its commitment to this principle.
- 3. Political Strategy:** The BJP uses the UCC to appeal to its core voter base, which includes Hindu nationalists and those in favor of a more unified national identity. It frames the UCC as a step towards modernizing India and removing what it considers discriminatory practices in personal laws.

B. Indian National Congress (INC)

- 1. Cautious Approach:** The Congress Party has traditionally adopted a more cautious and nuanced stance on the UCC. It supports the idea in principle but emphasizes the need for consensus and careful handling of religious sensitivities.

⁷ Alok Prasanna Kumar, "Uniform Civil Code: A Heedless Quest?", 51(25) *Economic & Political Weekly* (2016).

⁸ Peter Ronald deSouza, "Politics of the Uniform Civil Code in India", 50(48) *Economic & Political Weekly* (2015).

2. **Focus on Dialogue:** The Congress often advocates for broader consultations with all stakeholders, including religious leaders and civil society, before moving towards any implementation.
3. **Secular Credentials:** As a party that champions secularism, Congress aims to balance the principles of equality with respect for India's diverse cultural and religious landscape.⁹

C. Regional Parties

1. **Varied Positions:** Regional parties have diverse views on the UCC, largely influenced by the demographic composition and cultural context of their respective states.
2. **Focus on Autonomy:** Many regional parties prioritize state autonomy and may resist the imposition of a central law that overrides local customs and practices.

D. Leftist Parties

1. **Support for Uniformity:** Leftist parties, such as the Communist Party of India (Marxist), generally support the idea of uniform civil laws to promote social justice and gender equality.
2. **Gradual Implementation:** They advocate for a gradual and inclusive approach, ensuring that the rights of marginalized communities are protected.

E. Muslim and Minority Groups¹⁰

1. **Opposition and Concerns:** Many Muslim and other minority groups express strong opposition to the UCC, fearing it could infringe upon their religious freedoms and cultural practices.
2. **Demand for Protection:** These groups often demand assurances that their religious laws and customs will be respected and not subsumed under a uniform code.

The debate¹¹ over the UCC can significantly impact electoral politics. Parties like the BJP may gain support from proponents of the UCC, while those opposing it may consolidate minority votes. This debate often leads to polarization along religious lines, with potential to exacerbate communal tensions. Thus Passing a UCC would require significant legislative effort, including potential constitutional amendments and navigating through political opposition in both houses

⁹ Shimon Shetreet and Hiram E. Chodosh, "Uniform Civil Code for India Revisited: Evaluating the Contemporary Debate and Process of Legal Change", 19(4) *Manchester Journal of Transnational Islamic Law & Practice* (2023).

¹⁰ Jeffrey A. Redding, "A Secular Failure: Sectarianism and Communalism in Shayara Bano v. Union of India", 8(1) *Asian Journal of Law and Society* 56-71 (2021).

¹¹ M. P. Raju, *Uniform civil code: A mirage* (Anamika pub & distributors, 2003).

of Parliament.

IV. JUDICIAL ADVOCACY AND CONSTRAINTS FOR UCC

The judiciary has often linked the need for a UCC with gender justice, emphasizing that different personal laws tend to discriminate against women. The courts have highlighted that a UCC would ensure equality before the law, as enshrined in Article 14 of the Constitution. The judiciary frequently invokes Article 44, which calls for a UCC, underlining that while Directive Principles are non-justiciable, they are fundamental in the governance of the country and should guide state policies. The Indian judiciary has played a significant role in the discourse on the implementation of a Uniform Civil Code (UCC) and the broader principle of "One Nation, One Law." While the judiciary does not have the power to enact laws, its judgments and observations have frequently highlighted the importance and necessity of a UCC such as:¹²

A. **Shah Bano Case (1985)**¹³

- **Background:** Shah Bano, a Muslim woman, sought maintenance from her husband after divorce. The Supreme Court ruled in her favor under Section 125 of the Criminal Procedure Code (CrPC), which applies to all citizens irrespective of religion.
- **Judgment:** The Court observed the need for a UCC to promote national unity and reiterated that Article 44 of the Constitution expects the State to implement such a code.
- **Impact:** The case sparked a national debate and led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which diluted the Supreme Court's judgment but kept the UCC discussion alive.

B. **Sarla Mudgal Case (1995)**¹⁴

- **Background:** The case dealt with issues arising from the conversion of Hindus to Islam solely for the purpose of contracting a second marriage.
- **Judgment:** The Supreme Court strongly advocated for the implementation of a UCC to prevent such legal subterfuges and ensure uniformity in personal laws.
- **Observations:** The Court criticized the government's inaction regarding Article 44 and emphasized the importance of a UCC for ensuring justice and equality for women.

¹² Shruti Singh, "EGALITARIAN PARADIGM: ANALYSIS OF UNIFORM CIVIL CODE AS A CATALYST FOR GENDER EQUALITY IN INDIAN MATRIMONIAL LAW", 15(4) *Lex Humana (ISSN 2175-0947)* 427-442 (2023).

¹³ Mohd. Ahmad Khan v. Shah Bano Begum, 1985 AIR 945.

¹⁴ Smt. Sarla Mudgal, President, Kalyani v. Union Of India & Ors, 1995 AIR 1531.

C. John Vallamattom Case (2003)¹⁵

- **Background:** The case challenged Section 118 of the Indian Succession Act, 1925, which imposed restrictions on Christians in bequeathing property for religious or charitable purposes.
- **Judgment:** The Supreme Court struck down the section as unconstitutional and reiterated the need for a UCC.
- **Observations:** The Court pointed out that different personal laws create inequalities and that a UCC would help in achieving the goals of the Constitution.

The Supreme Court has continued to express the need for a UCC in recent judgments, albeit cautiously, acknowledging the complexity and sensitivity of the issue. The judiciary recognizes the need for societal readiness and consensus for the implementation of a UCC, given the diverse and pluralistic nature of Indian society. However, the limitations upon judiciary cannot be negated as it can only interpret and suggest enacting UCC. Further, the implementation of a UCC requires legislative action by the Parliament.

V. A WAY FORWARD

Enforcing the principle of "One Nation, One Law" in India, especially through the implementation of a UCC, is a complex and multifaceted process. India's legal system is currently characterized by a variety of personal laws for different religious communities, covering areas such as marriage, divorce, inheritance, and adoption. These include:¹⁶

- **Hindu Personal Laws** (for Hindus, Jains, Sikhs, and Buddhists)
- **Muslim Personal Laws** (based on Sharia)
- **Christian Personal Laws**
- **Parsi Personal Laws**

Here's an in-depth look at what it would entail, including the challenges and steps towards enforcement:

A. Challenges¹⁷

- a) **Resistance from Religious Groups as a Perceived Threat to Religious Freedom:**

¹⁵ John Vallamattom & Anr v. Union Of India, (2003) 6 SCC 611.

¹⁶ Ankit Suri, and Ramakant Tripathi. "Uniform Civil Code: Its Enforcement in India." *Issue 4 Int'l JL Mgmt. & Human.* 4 (2021): 1579.

¹⁷ Faizan Mustafa and Nehaluddin Ahmad, "Indian Polity and Personal Law Challenges of the Proposed Uniform Civil Code", 19(4) *Manchester Journal of Transnational Islamic Law & Practice* (2023).

Many religious communities view personal laws as integral to their cultural and religious identity. Concerns that a UCC may infringe upon religious freedoms guaranteed by the Constitution.

- b) **Political Will and Consensus:** Differing political ideologies and interests make building consensus challenging. Politicians may hesitate to support UCC due to potential backlash from religious communities.
- c) **Legal and Constitutional Hurdles:** Extensive amendments and repeals of existing personal laws would be required. Ensuring that the UCC aligns with constitutional provisions and withstands judicial scrutiny.

B. Steps towards Enforcement¹⁸

- a) **Drafting the UCC:** Comprehensive legislation needs to be drafted, covering all aspects of civil law uniformly for all citizens. Engage with various stakeholders, including religious leaders, legal experts, and civil society, to build consensus and address concerns.
- b) **Supreme Court's Role:** The judiciary, particularly the Supreme Court, has periodically emphasized the need for a UCC. Judicial pronouncements can pave the way for legislative action.
- c) **Public Awareness and Education:** Foster a nationwide dialogue to educate and inform citizens about the benefits and implications of a UCC.
- d) **Media Campaigns:** Utilize media to disseminate information and counter misinformation about the UCC.
- e) **Phased Implementation:** Implement the UCC in phases, starting with areas where there is broad consensus.
- f) **Pilot Projects:** Consider pilot implementation in select states or regions to gauge the impact and gather feedback.
- g) **Addressing Religious Concerns:** Ensure that the UCC respects essential religious practices and beliefs while eliminating discriminatory aspects.
- h) **Dialogue with Religious Leaders:** Continuous engagement with religious leaders to address concerns and find common ground.

¹⁸ Archana Parashar and Amita Dhanda (eds.), *Redefining family law in India* (Taylor & Francis, 2020).

VI. CONCLUSION

The enforcement of "One Nation, One Law" in India, through the implementation of a Uniform Civil Code, is a monumental task requiring careful planning, widespread consultation, and a phased approach. While it promises significant benefits in terms of equality and national unity, it also faces substantial challenges, particularly in balancing religious freedoms and achieving political consensus. The success of this initiative depends on inclusive dialogue, sensitive handling of religious concerns, and strong political will.

The Indian judiciary has consistently underscored the importance of a Uniform Civil Code in ensuring equality, justice, and national integration. Through various landmark judgments, the Supreme Court has highlighted the constitutional mandate under Article 44 and the need for uniformity in personal laws to prevent discrimination and uphold the principles of secularism and gender justice. However, the judiciary also recognizes its limitations and the need for legislative action and societal consensus for the successful implementation of a UCC. However, the political outlook on "One Nation, One Law" in India is marked by a complex interplay of ideological beliefs, electoral strategies, and socio-religious dynamics. While the BJP strongly pushes for a UCC, emphasizing national unity and equality, other parties and minority groups call for a more cautious, inclusive, and gradual approach, respecting India's pluralistic fabric. The debate over the UCC will likely continue to be a contentious issue in Indian politics, influencing both policy-making and electoral outcomes.
